

Senate Bill No. 1307

Passed the Senate August 22, 2006

Secretary of the Senate

Passed the Assembly August 10, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 123105 of the Health and Safety Code, and to amend Sections 4683 and 4690 of the Probate Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1307, Poochigian. Medical information: confidentiality.

(1) Existing law requires, if a patient's representative requests medical information regarding the patient, a physician or other health care provider to disclose the information to the representative.

This bill would include an agent under a power of attorney for health care, to the extent necessary for the agent to fulfill his or her duties, as specified, within the definition of patient's representative.

(2) Existing law permits an agent under a power of attorney for health care to make certain decisions effective after the death of the principal who executed the power of attorney.

This bill would additionally permit an agent, if necessary to fulfill the duties of that agent under a power of attorney for health care and after the death of the principal, to release the records of that principal.

(3) Under existing law, an agent under a power of attorney for health care may consult with and obtain information from a person, as defined, to carry out the agent's duties, as specified. Existing law requires the person to comply with the agent's request.

This bill would additionally permit the agent to consult with and obtain information from a supervising health care provider.

The people of the State of California do enact as follows:

SECTION 1. Section 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) "Health care provider" means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(b) “Mental health records” means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. “Mental health records” includes, but is not limited to, all alcohol and drug abuse records.

(c) “Patient” means a patient or former patient of a health care provider.

(d) “Patient records” means records in any form or medium maintained by, or in the custody or control of, a health care

provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. “Patient records” includes only records pertaining to the patient requesting the records or whose representative requests the records. “Patient records” does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. “Patient records” does not include information contained in aggregate form, such as indices, registers, or logs.

(e) “Patient’s representative” or “representative” means any of the following:

- (1) A parent or guardian of a minor who is a patient.
- (2) The guardian or conservator of the person of an adult patient.
- (3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.
- (4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.

(f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 2. Section 4683 of the Probate Code is amended to read:

4683. Subject to any limitations in the power of attorney for health care:

- (a) An agent designated in the power of attorney may make health care decisions for the principal to the same extent the principal could make health care decisions if the principal had the capacity to do so.
- (b) The agent may also make decisions that may be effective after the principal’s death, including the following:
 - (1) Making a disposition under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).
 - (2) Authorizing an autopsy under Section 7113 of the Health and Safety Code.

(3) Directing the disposition of remains under Section 7100 of the Health and Safety Code.

(4) Authorizing the release of the records of the principal to the extent necessary for the agent to fulfill his or her duties as set forth in this division.

SEC. 3. Section 4690 of the Probate Code is amended to read:

4690. (a) If the principal becomes wholly or partially incapacitated, or if there is a question concerning the capacity of the principal, the agent may consult with a person previously designated by the principal for this purpose, and may also consult with and obtain information needed to carry out the agent's duties from the principal's spouse, physician, supervising health care provider, attorney, a member of the principal's family, or other person, including a business entity or government agency, with respect to matters covered by the power of attorney for health care.

(b) Except as set forth in subdivision (c), a person described in subdivision (a) from whom information is requested shall disclose information that the agent requires to carry out his or her duties. Disclosure under this section is not a waiver of any privilege that may apply to the information disclosed.

Approved _____, 2006

Governor